TION. — The plaintiff, as a witness in his own behalf, admitted upon cross-examination that he had been convicted of the crime of forgery and served a term in the state prison. On the theory that his character had been impeached, he then sought to introduce evidence of his general reputation for truth. *Held*, that the evidence is inadmissible. *Derrick* v. *Wallace*, 145 N. Y. Supp. 585 (Sup. Ct. App. Div.).

Evidence of a witness's reputation for truth is not admissible until his character has been impeached. *State* v. *Owens*, 109 Ia. 1, 79 N. W. 462. Contradictory evidence, or proof of inconsistent statements out of court, or inconsistencies elicited on cross-examination, are as consistent with mistaken observation as with untruthfulness, and, if they involve the character of the witness at all, do so only incidentally. Thus, in these situations it is held not worth while prolonging the trial with evidence of his good reputation. *Russell* v. *Coffin*, 8 Pick. (Mass.) 143; *Tedens* v. *Schumers*, 112 Ill. 263. *Contra*, *George* v. *Pilcher*, 28 Gratt. (Va.) 299. Where, however, the attack is directed at the witness himself, by proof of collateral matter showing him to be the kind of man whom the jury ought not to believe, the party calling him should be permitted to sustain the witness's character by evidence of his reputation for veracity. *Webb* v. *State*, 29 Oh. St. 351. And although the attack is by proof of specific, discrediting acts, nevertheless his character is directly involved. *Gertz* v. *Fitchburg R. R.*, 137 Mass. 77. The suggestion of the principal case that, where these facts are elicited on cross-examination the only method of rehabilitation should be by redirect examination to explain them, is unsound. The only bearing of these former crimes upon the credibility of his testimony is by inference to the witness's bad character. *Kraimer* v. *State*, 117 Wis. 350, 93 N. W. 1097; *People* v. *Amanacus*, 50 Cal. 233. Where, as in the principal case, the discrediting acts occurred some years back, the witness should at least be permitted to show that he has since acquired a good reputation for truth. *Shields* v. *Conway*, 133 Ky. 35, 117 S. W. 340; 2 WIGMORE, EVIDENCE, § 1117. For a review of the authorities, see 2 WIGMORE, EVIDENCE, § 1106.

BOOK REVIEWS.

THE PRINCIPLES OF JUDICIAL PROOF. By John Henry Wigmore. Boston: Little, Brown, and Company. 1913. pp. xvi, 1179.

This important and most interesting book "aspires to offer, though in tentative form only, a *novum organum* for the study of Judicial Evidence." No one living has such qualifications for this work as Professor Wigmore, and by his present attempt he has not a little increased the great debt which scholars and practitioners already owe him.

The introduction emphasizes the distinction between Proof in the general sense — the process of persuading the mind by reasoning — and Admissibility — determined by rules of law aimed to protect the tribunal from erroneous persuasion and waste of time. These rules of admissibility, with which our law of evidence is concerned, "are destined to lessen in relative importance during the next generation or later. Proof will assume the important place; and we must therefore prepare ourselves for this shifting of emphasis." The experience of continental Europe in its change from "the ancient worn-out numerical system of 'legal proof'" to "the so-called 'free proof,' namely, no

system at all," is made a warning of the need to prepare by a scientific study of the principles of "natural proof" for "the coming stage of the law of Evidence, — an epoch in which the present rules of Admissibility, already become too largely formalistic and unreal, will be partly supplanted by a new method." Such a method the author proceeds to suggest. Believing that "there must be a probative science independent of the artificial rules of procedure," though it "may as yet be imperfectly formulated or even incapable of formulation," he seeks a "*method of solving* a complex mass of evidence in contentious litigation" — "some method which will enable us to lift into consciousness and to state in words the reasons why a total mass of evidence does or should persuade us to a given conclusion, and why our conclusion would or should have been different or identical if some part of that total mass of evidence had been different. The mind *is* moved; then can we not explain *why* it is moved? If we can set down and work out a mathematical equation, why can we not set down and work out a mental probative equation?"

He approaches the solution of this problem by first taking up, in the earlier divisions of the book ("Circumstantial Evidence" and "Testimonial Evidence") the accurate analysis of the inference proposed in any case by an offer of proof, using as material for the study "the *various kinds of specific evidential facts commonly offered in litigation*, and their *possibilities of inference*." Each extract in these earlier chapters is to be used for preliminary drill in analyzing "the actual mind-to-mind process of persuasion and belief," and the rules of evidence are to be totally disregarded. The problem is to be exactly that of a juror "if the evidence were safely in the case and the counsel were arguing to him about it." This leads up to the main objective, "the method of solving a complex mass of evidence in contentious litigation," dealt with in Part III, "Problems of Proof in Masses of Mixed Evidence." A system is here offered for presenting in diagrammatic form, by a great variety of symbols, the probative effect of each piece of proof in a body of evidence — "the relation of each evidential fact to each and all others."

In this chapter, as in the others, Professor Wigmore has added a great variety of extracts as specimens to be used in applying his method. In doing so he has shown the same sure instinct for the illuminating practical illustration, and the same unfailing power of intellectual stimulation, which are to be seen in his other writings, and he has made his selections with a range and richness unattainable by another. His characteristically modest hope "that the illustrations will furnish entertaining reading in a field little patronized hitherto by lawyers" is far within the fact. No description, indeed, can prepare the reader for the varied fascination of the views opened by many windows into fields of psychology, history and literature. Among nearly four hundred extracts, Coke, Best and Hans Gross rub elbows with Balzac, Dickens and Robert Louis Stevenson, Royce, Whately and William James. Professor Münsterberg's applied criminal psychology is found in company with an extract (would it were longer!) from Professor Wigmore's trenchant commentary; finger-print identification is expounded with illustrations, and remarkable criminal trials from every time and country are brought together and summarized with skill. The mere names of a few will indicate the richness of the collection. The White murder trial, with plans, testimony and the defendant's argument, as well as Webster's, gathered from rare sources, occupies nearly ninety pages. There is an even fuller account of *Throckmorton* v. *Holt*, taken from contemporary newspapers, with facsimiles of the mysterious will which bore the names of President Grant and General and Mrs. Sherman, and of the envelope which brought it from its unknown source to the Register of Wills; the Hillmon case is reproduced at length from sources equally inaccessible to the ordinary reader; Durrant, Luetgert, Madeleine Smith and Tichborne are but a few other names selected at random. A list of trials useful for study, and much new matter

from Professor Wigmore's own pen, should not be forgotten. Altogether it is a book which, once opened, a lawyer will lay down only upon compulsion.

The apparatus offered by Professor Wigmore for solving a complex mass of evidence is subject to limitations which he sees clearly and states with candor. "It can hope to show only what our belief actually is, and how we have actually reached it." "All that the scheme can do for us is to make plain the entirety and details of our actual mental process. It cannot reveal laws which should be consciously obeyed in that process. This is because no system of logic has yet discovered and established such laws. There are no known rules available to test the correctness of the infinite variety of inferences presentable in judicial trials." "For these and other reasons, then, it must be understood that the desired scheme is not expected to tell us what ought logically to be our belief, either as to individual subordinate data or as to the final net fact in issue." Even so, the conditions of the problem are so intricate that the attempt at complete graphic analysis carries with it, as Professor Wigmore points out, a constant danger of too complicated symbols. And no matter how accurate the analysis and distribution of the matter, there must still be an inherent incompleteness resulting from the attempt to solve on paper a problem of the courtroom. For no presentation could put the reader in the jury's position, or show "explicitly in a single compass how we *do reason and believe* for those individual facts and from them to the final fact," without reproducing a thousand significant impressions from look and bearing of witnesses. Perfectly as Professor Wigmore's chart presents the facts in *Commonwealth* v. *Umilian*, or *Hatchett* v. *Commonwealth*, and their logical relations, one realizes that what to the reader is black and white on a flat sheet was high relief and vivid color for the hearer; and that in the jury's work of balancing probabilities the result may have depended at every step on those very heights and shades. This, which Professor Wigmore would be the first to recognize, does not detract from the interest of his scheme, but only indicates necessary limitations on what it can accomplish. As he wisely says, "Men's aptitudes for the use of such schemes vary greatly," and the precise manner in which his system will be used by different persons is likely to differ. "Each person may contrive his own special ways of using these or other symbols." But in one way or another the practitioner may obtain from the system the same tonic effect in strengthening and clearing his thought that comes to the brief writer from a rigid adherence to logical form in framing his headings and arranging his matter. Even though he later destroy all the scaffolding, it was what brought correctness and solidity to the structure.

The use of the book in teaching may well depend on like questions of individual aptitude and individual variation. Teaching is a matter more of men than of methods, and no one can teach effectively what he has not mastered for himself and passed as a reality through his own consciousness. The mere reading of this book shows how illuminating a course might be based on it if conducted by its compiler; whether it could be made a success by another would depend on how far he had caught the same spirit. Without this, one can see how the course might end in the attempt to present in the classroom what had better be left for the courtroom. But no thoughtful student of the law of evidence can fail to find delight and instruction between its covers.

E. R. T.